The court held that the provision did not make the contract as to fees void, basing its conclusion upon the statute, Laws 1901, p. 46 (Ann. St. 1906, § 4937-2) and *Lipscomb* v. *Adams,* supra, in which the court used the following language: "We do not lay it down as a general rule that a contract by which a client agrees not to compromise a suit without the consent of his attorney is not contrary to public policy, for circumstances may well be supposed in which such a contract would be held to be illegal for that reason, etc."

§ 4937-1 of Missouri Ann. St. 1906, provides that "The compensation of an attorney * * * is governed by agreement, express or implied, which is not restrained by law. From the commencement of an action * * * the attorney * * * has a lien upon his client's cause of action * * *; and cannot be affected by any settlements between the parties before or after judgment." This section is taken from the New York Code of Civ. Pro., § 66, which was in force when *Matter of Snyder* (supra) was decided. *Taylor* v. *Transit Co.,* 198 Mo. 715, 725, 97 S. W. 155. But § 4937-2, referred to above, is not found in the New York Code. 4937-2 provides in substance the following: that in all actions it shall be lawful for an attorney-at-law to contract with his client for legal services for a certain portion or percentage of the proceeds, and upon notice in writing by the attorney, served upon the defendant, that he has such an agreement, stating therein the interest he has in such claim or cause of action, then the agreement shall operate as a lien upon the claim or cause of action and upon the proceeds of any settlement thereof, and cannot be affected by any settlement between the parties; and any defendant who shall, after notice served as provided, in any manner settle the cause of action or claim with the attorney's client without first procuring the written assent of such attorney, shall be liable to such attorney for such attorney's lien upon the proceeds, as per the contract existing between the attorney and client. While this statute does not expressly state that contracts of the nature herein considered shall be valid, there is a clear declaration of policy, and it seems that the court could not very well hold otherwise than it did. So far as the writer is aware the provisions of § 4937-2 are peculiar to Missouri.

R. W. A.

THE PENNSYLVANIA SUPREME COURT AND THE PENNSYLVANIA RAILROAD COMPANY.—A widespread impression has got abroad among the members of the profession in other states that the decisions of the Pennsylvania Supreme Court are not so unprejudiced as they might be where one of the parties to the cause is the Pennsylvania Railroad Company. The extreme doctrine which that court has maintained in cases of proximate causation, particularly in actions where contributory negligence of the plaintiff is pleaded, and where, in this jurisdiction, the Pennsylvania Railroad Company is so frequently the party defendant, if it has not furnished the origin of, at least has served to lend credence to, this unfortunate impression. See the very recent case of *Schlemmer* v. *Buffalo, R. & P. R'y Co.* (1909), — Pa.

—, 71 Atl. 1053, where, in a short per curiam opinion, the Pennsylvania law of contributory negligence is clearly stated. The comparatively recent decision in *Philadelphia County* v. *The Pennsylvania R. R. Co.* (1908), 220 Pa. 100, 68 Atl. 676, in which case the two cent rate law was declared unconstitutional in so far as it affected the defendant company (and it has not yet been declared unconstitutional in so far as it affects other railroad companies operating within the state) has been mentioned in some quarters as a further reason for the suspicion cast upon the impartiality of the Pennsylvania Supreme Bench.

The unexpected has come to pass, however,—the Pennsylvania Supreme Court has scored the corporation that it is sometimes said to favor. The recently decided case of *Catherine Burns* v. *The Pennsylvania R. R. Co.* (1909), — Pa. —, 71 Atl. 1054, furnished the opportunity for a rebuke to counsel that should, from an ethical viewpoint at least, be more frequently administered to corporation counsel by all self-respecting courts. This case was an action brought against the railroad company by the widow Burns, who sues to recover for the death of her husband who was run down on a foggy morning by one of the company's trains at a notoriously dangerous grade crossing. It has been one of the longest litigated death claim suits on the records of the Pennsylvania courts. It was heard in the Supreme Court four times: 210 Pa. 90, 59 Atl. 687; 213 Pa. 280, 62 Atl. 845; 219 Pa. 225, 68 Atl. 704; and 71 Atl. 1054. It had five jury trials in the Court of Common Pleas,—in addition to the four common pleas verdicts appealed from there was one mistrial, a juror being found asleep during the submission of evidence. The case was submitted to arbitrators once, and an unsuccessful effort was made upon another occasion to bring it before such a body but the case had attained such notoriety that no one could be found willing to serve in such a capacity. Some of these facts appear in the latest decision of the court, others the writer adds of his own knowledge. In reading the decision of the court, MESTREZAT, J., after referring to the former appeals, says: "We are now pleased to say that our judgment on this appeal will terminate the litigation which has been pending for nearly six years. Such delay frequently results in a denial of justice and contravenes the maxim: 'Interest reipublicæ ut sit finis litium.'"

"We have examined the twelve assignments of error, and we fail to find any merit in a single one of them. * * * (four assignments) are not only without merit but have no exceptions of record to support them. * * * The court was clearly right in dismissing the exceptions to the award of arbitrators. They were frivolous and without substance, and the only apparent excuse for filing them was to delay the final adjudication of the cause." Among other assignments of error brought to the Supreme Court was the refusal of the Common Pleas Court to grant a change of venue on the alleged grounds that the company could not have a fair and impartial trial in Cambria County because of the "unfair, improper, and in many instances, untruthful statements" of the Cambria County press. In reviewing this assignment, the Court said: * * * "it appears that, the second

day after the first comment on the case was made by the press, the counsel for the defendant replied in a lengthy article in defense of his company. If therefore the case was tried in the newspapers of the county, the defendant company, by its counsel, and not the plaintiff, was responsible in part for its submission to that tribunal for adjudication. He who invites war must accept the consequences."

The position taken by the court in this case must not be taken to mean, however, that the severity of the doctrine of contributory negligence is to be in anywise abated, for on the same day that Court read the opinion in the *Burns* case (January 4, 1909), the per curium opinion in *Schlemmer* v. *The Railroad,* supra, was handed down. In this latter case this unmistakable statement of the law is found: "It is the settled law of Pennsylvania that *any* negligence of a party injured, which contributed to his injury, bars his recovery of damages without regard to the negligence either greater or less than his own by the other party."

Justice MESTREZAT, who delivers the opinion in the principal case, is known as the Harlan of the Pennsylvania Supreme Bench, because of the great frequency of his dissenting opinions. J. E. O., Jr.